

**UNITED STATES BANKRUPTCY
COURT DISTRICT OF NEW JERSEY**

Caption in Compliance with D.N.J. LBR 9004-1(b)

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Counsel for 12535 SE 82ND AVE LLC

In re:

Bed Bath & Beyond, Inc., *et al.*,
Debtors.

Chapter 11
Case No. 23-13359-VFP
(Jointly Administered)

Honorable Vincent F. Papalia,
U.S.B.J

Re: Docket Entry 92, 714, 1114

**12535 SE 82ND AVE LLC’S OBJECTION/CLARIFICATION TO DEBTORS’
STATED BID AMOUNT FOR LEASE FOR STORE NO. 3128**

12535 SE 82ND AVE LLC (the “Landlord”) by and through its undersigned counsel,
hereby submits this objection and clarification (the “Objection”) to the Debtors’ stated bid amount

for the lease between the Landlord and Buy Buy Baby, Inc. (“BBBY”) for Store No. 3128 (the “3128 Lease”). In support, Landlord respectfully states as follows:

THE JUNE 26 AUCTION

1. On June 26, 2023, the Debtors conducted the Phase 1 Lease Auction with respect to multiple leases, including the 3128 Lease. The Auction was conducted live at the Debtors’ offices of Kirkland & Ellis, LLP by A&G Real Estate Partners (“A&G”) and the Debtors’ counsel, and participants (including Landlord and its counsel) participated virtually.

2. The 3128 Lease was called for auction and the Landlord was the sole bidder for the lease. Landlord submitted a live bid of: (i) \$20,636.00 in cash, PLUS (ii) a waiver of all prepetition claims, PLUS (iii) a waiver of all postpetition claims, including administrative rent (“Landlord’s Bid”).

3. Upon receiving Landlord’s Bid, A&G consulted with Debtors’ counsel, and then accepted the bid. A&G then closed bidding with respect to the 3128 Lease, announcing that Landlord was the successful bidder, subject only to a subsequent going concern auction on June 28. No further offer has been made for the 3128 Lease, and the going concern auction (which was continued and then cancelled) produced no bidder for the 3128 Lease.

4. On June 27, 2023, the Debtors filed their Notice of Successful and Backup Bidder With Respect to the Phase 1 Auction of Certain of the Debtors’ Lease Assets and Assumption and Assignment of Certain Unexpired Leases (“Winning Bid Notice”), ECF No. 1114.

5. In the Winning Bid Notice at pg. 7 of 11, the Debtors state the Landlord’s successful bid as \$100,000.00. However, Landlord’s Winning Bid, is as stated above a combination of cash and waivers of claims. Landlord assumes that the Debtors’ statement of \$100,000.00 was merely its estimation of the value of Landlord’s bid.

6. Accordingly, Landlord files this Objection/Clarification to confirm its bid and the cash payment amount that will be due at closing. Landlord's bid will be clearly reflected in the transcript of the Auction (the Debtors engaged a court reporter to transcribe the entire June 26 Auction proceedings).

**RESERVATION OF RIGHTS, INCLUDING WITH RESPECT TO FURTHER CURE
CLAIMS IF LANDLORD'S BID IS NOT APPROVED**

7. To the extent that Landlord's Bid is not approved by an order of the Court acceptable to Landlord, Landlord reserves its right to assert any and all other claims against the Debtors arising out of or related to the Lease.

8. Landlord reserves its rights to object to any proposed assignee of the 3128 Lease on any basis, to the extent BBY seeks to assign the Lease to a party other than Landlord, as well as any other rights it now has or may have under applicable law with respect to this matter, including, but not limited to, any rights under § 365 of the Bankruptcy Code. Specifically, to the extent that any default or breach of the Lease is not cured or required to be cured prior to assumption and BBY later seeks to assign the Lease, Landlord will pursue all its rights and remedies against any assignee in the proper forum, as permitted under, *inter alia*, § 365(k) of the Bankruptcy Code.

WHEREFORE, 12535 SE 82ND AVE LLC respectfully requests that the Court enter an order consistent with this Objection/Clarification.

Dated: July 11, 2023

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CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of July 2023, I caused a copy of *12535 SE 82nd Ave LLC's Objection/Clarification to Debtors' Stated Bid Amount for Lease for Store No. 3128* to be served by electronic means through email to the following parties listed below and the Court's ECF system to all parties receiving notices in this case.

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